

**TESTIMONY OF DAVID J. STERN**  
**COMMISSIONER, NATIONAL BASKETBALL ASSOCIATION**

**AND**

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**SENIOR VICE PRESIDENT AND GENERAL COUNSEL,**  
**NATIONAL BASKETBALL ASSOCIATION**

**BEFORE THE COMMITTEE ON GOVERNMENT REFORM**  
**U.S. HOUSE OF REPRESENTATIVES**

**MAY 19, 2005**

Chairman Davis and Members of the Committee:

The use by athletes of steroids and other performance-enhancing substances is an issue implicating the fundamental integrity of all athletic competition. The National Basketball Association (“NBA”), as a result, has a strong and continuing interest in ensuring that these drugs are not used by our players and that our games are conducted on a fair and legitimate basis. Steroids and performance-enhancing drugs also would pose serious risks to the health of our players, which provides a separate but equally compelling rationale for preventing their use in the NBA. Finally, it is simply the fact that young people – and, especially, young athletes – look up to and attempt to emulate professional athletes. It is therefore incumbent on the NBA and its players to

keep steroids out of our game in order to send the message to all young fans that these substances have no legitimate place in athletic competition.

For all of these reasons, the NBA, in conjunction with the National Basketball Players Association (“Players Association”), has – over the past six seasons – paid considerable attention to the issue of steroids and performance-enhancing drugs in our sport. We have agreed on a comprehensive testing program as part of our collective bargaining negotiations; we have amended that program since 1999 to add new performance-enhancing substances as appropriate; and we have created an ongoing program to educate our players about the dangers of these drugs. We have previously produced to the Committee detailed information about the past and current structure of the NBA drug program, how it works, and its results to date.

The NBA and the Players Association are currently engaged in active negotiations for a new labor contract, to succeed the one that is scheduled to expire at the end of the current season. In those negotiations, the NBA has made proposals to the Players Association that would significantly improve our steroids and performance-enhancing drug program, and we are committed to obtaining those improvements as part of any new labor contract. As we describe in detail below, these improvements will, among other things, increase the number of random tests for players, add an off-season testing component, broaden our list of banned substances, and increase the penalties for violators.

It is therefore timely and appropriate for the NBA to have this opportunity to appear before the Committee to testify regarding steroids and performance-

enhancing drugs. We appreciate the Committee's hard work in this area, its seriousness of purpose, and the public attention it has drawn to this very important issue.

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### The History of the NBA Drug Program

In 1983, the NBA and the Players Association adopted our first drug program. At the outset, the focus of our collectively-bargained program was on drugs of abuse – in particular, cocaine and heroin. Veteran players who tested positive for these substances in “reasonable cause” tests were immediately dismissed from the NBA for a minimum of two years; and, when the program was modified in collective bargaining negotiations in 1988, rookie players who tested positive in either random tests or “reasonable cause” tests were immediately dismissed from the NBA for a minimum of one year. In all cases, players who came forward voluntarily for assistance were provided with appropriate treatment and counseling, and were subject to fines, suspensions, or dismissal for failure to comply with the terms of their prescribed treatment programs.

In 1999, the NBA and the Players Association substantially modified and improved the drug program. Among other things, the list of banned substances was expanded to include steroids and performance-enhancing drugs; testing was expanded to cover veterans as well as rookie players; and penalties for violators were increased. The Medical Director overseeing the NBA's drug program is Dr. Lloyd Baccus; he has served in this capacity since 1989. Rick Buchanan, NBA

Senior Vice President and General Counsel, is the senior NBA executive responsible for administering the program.

The NBA had no evidence in 1999 (and we have none today) to suggest even minimal use of steroids or performance-enhancing substances by NBA players. Indeed, some have suggested that the sport of basketball -- which emphasizes quickness, agility, dexterity, and skill above all other physical attributes -- does not lend itself to the use of steroids and performance-enhancing substances, which are primarily used to build muscle mass, strength, and endurance. Nevertheless, both the NBA and the Players Association believed in 1999 that it was important to adopt a policy before any problem could emerge, and the NBA remains committed to that same approach today.

Testing of NBA players for steroids and performance-enhancing drugs commenced with the 1999-2000 season. Under the 1999 program, all players were tested once during training camp (the month of October), and rookies were tested three additional times during the course of the regular season. All such tests were conducted on a random basis -- i.e., without prior notice to the player. In addition, all players were subject to testing at any time upon "reasonable cause." The laboratory used by the NBA also tests for masking agents and diuretics that could be used to hide drug use.

Players who tested positive under the 1999 program were required to be suspended for 5 games (first offense), 10 games (second offense), and 25 games (subsequent offenses). (There was a limited exception to this rule for certain substances newly added to the program in 2000, such as DHEA; positive tests for

these substances were to result in suspensions of 2, 8, and 12 games, respectively, for the first, second, and subsequent offenses.) All NBA suspensions are without pay, and all suspensions of players are publicly announced, although the applicable substance was only to be identified upon consent of the player. Any appeal by the player of a drug program suspension did not stay the imposition of the penalty.

In order to remain current with developments in this area, the 1999 drug program provided a mechanism for adding new substances to our banned list. These additions were made by a Prohibited Substances Committee, comprised of one representative from both the NBA and the Players Association, and three drug testing experts that were jointly selected by the parties. Those experts included Dr. Barry Sample, who served as Director of the Anti-Doping Laboratory for the 1996 Summer Olympics in Atlanta, and Dr. Doug Rollins, who served as Medical Director of the Doping Control Program for the 2002 Winter Olympics in Salt Lake City.

In November 2000, the Prohibited Substances Committee added nine new substances to the NBA's banned list, including androstenedione and DHEA (even though androstenedione was not declared illegal by Congress until 2004, and DHEA is still available over-the-counter). In September 2003, six additional substances were added by the Prohibited Substances Committee, including ephedra and related products. (Again, this was well before ephedra and related products were banned by the FDA in February 2004. The NBA's prohibition of these substances will not be affected by a federal court's decision in April

overturning the FDA's ephedra ban.) And, in December 2003, the Prohibited Substances Committee banned Gestrinone and THG.

The NBA has conducted almost 4,200 tests for steroids and performance-enhancing drugs in the six seasons since these substances were banned by our drug program, and have had a total of 23 initial laboratory positives – approximately  $\frac{1}{2}$  of 1 percent. Of the 23 initial laboratory positives in the NBA's program, only three satisfied the additional criteria that must be met for a sample to be confirmed as "positive" under the NBA's drug program (i.e., a laboratory positive on the "B" sample conducted at a different laboratory, and review and confirmation by the Medical Review Officer). Several initial laboratory positives involved players that were terminated from employment prior to confirmation of their test results; others were found by the Medical Review Officer to be subject to a reasonable medical explanation. Each of the 3 players with a confirmed positive test result was immediately suspended. None of these players are currently playing in the NBA.

In the last few years, the NBA and the Players Association have placed increasing emphasis on the dangers of dietary supplements, which are not subject to approval by the federal government. A special notice regarding dietary supplements is now distributed to all players prior to the start of each season, and is displayed as a poster in each team locker room. The warning states in part:

"Use of supplements has been associated with high blood pressure, heart attack, stroke, seizure, and sudden death. These events have occurred in young adults, including elite athletes, in otherwise good health. Even supplements that are 'natural' can have adverse effects. . . . Because supplements are not regulated, their quality and potency may vary significantly from product to product. In fact, supplements may be contaminated with ingredients not

listed on the label. Some of these ingredients may be harmful; others may be banned by the NBA/NBPA Anti-Drug Program, and could lead to a positive drug test.”

NBA players must be particularly careful about any supplements they ingest because the NBA’s drug program has a “strict liability” standard. All players are responsible for whatever substances they put in their bodies; a player does not need to have intended to take a performance-enhancing substance in order to violate the policy and be penalized. Thus, players may test positive (and suffer the consequences) as the result of the use of a tainted nutritional supplement or the use of a legal substance, such as DHEA, that is banned by our drug program.

In addition to drug testing, the NBA’s drug program contains a substantial education and counseling component. Each NBA player, during each season, is required to attend a “team awareness” meeting, at which substance abuse issues are addressed by members of the program’s professional staff. In addition, prior to their entry into the NBA, rookie players must attend a week-long “Rookie Transition Program,” during which the dangers of drug and steroid use – among numerous other topics – are addressed in detail. A presentation on the NBA’s drug program is also given at the NBA’s Pre-Draft Camp in June of each year, where prospective NBA draftees are gathered. Finally, Dr. Baccus maintains a nationwide network of medical providers, at least one of which is available in each NBA city, to assist players with counseling and treatment as medically indicated.

### Improvements to the NBA's Drug Program

The NBA's 1999 Collective Bargaining Agreement expires at the conclusion of the current NBA season, specifically on June 30, and the NBA and the Players Association are currently engaged in negotiations for a successor agreement. It is our hope that such an agreement can be reached prior to the end of the season, and our expectation that it will include a number of improvements to the drug program, including additional random testing for all players for steroids and performance-enhancing drugs. The NBA has proposed to the Players Association that the following changes be made to the Program with respect to steroids and performance-enhancing drugs:

- All players (veterans and rookies) will be tested at random 4 times during the season (once during training camp and 3 additional times during the season).
- All players (veterans and rookies) will be subject to off-season testing.
- Penalties for violators will be increased as follows: first offense -- 10 game suspension; second offense -- 25 game suspension; third offense -- dismissal and disqualification from the NBA (subject to reinstatement after two years).
- The list of banned substances will be expanded to include all steroids made illegal by the Anabolic Steroids Control Act of 2004, plus additional steroids and stimulants banned by WADA, and a provision will be added requiring that any substance declared illegal by Congress will automatically be added to the NBA's banned substances list.
- Other technical changes will be made to the program, such as lowering the threshold for a positive testosterone test from a ratio of 6:1 to a ratio of 4:1, as WADA did earlier this year, and changing the NBA's testing laboratory to one accredited by WADA in order to take advantage of the most advanced laboratory science.

With these improvements to our program, our continuing ability to make changes to the list of banned substances through our Prohibited Substances



Committee, and our ongoing efforts to educate our players about the dangers of steroids and performance-enhancing drugs, the NBA will soon have an even stronger and more effective drug program. Our fans and players deserve no less.

### Public Education

We recognize that one of the Committee's concerns is the extent to which young people, both athletes and non-athletes, are using steroids today. The NBA is fully supportive of efforts to better educate young fans about the dangers of these substances, as well as drugs of abuse such as marijuana and cocaine. Indeed, the NBA, its teams, and its players have made numerous contributions to organizations and initiatives that counsel against substance abuse. The NBA, for example, contributes financially to organizations such as Partnership for a Drug Free America. We have also previously created public service announcements for the "Just Say No" campaign, and currently include anti-drug messaging in our Basketball Without Borders program -- an international basketball youth camp and outreach initiative that promotes friendship, healthy living, and education throughout the world.

NBA teams, as well, have sought to educate young people about the dangers of drug abuse. To name just a few examples: (i) for the past 15 years, the San Antonio Spurs have sponsored the Drug-Free Youth Basketball League, an eight-week basketball league targeting kids from less affluent city neighborhoods and promoting the values of teamwork, discipline, and avoidance of drugs; (ii) the

Denver Nuggets provide airtime in their local game telecasts for public service announcements from the Partnership for a Drug Free America/Drug Free Denver, and sponsor a Community Ambassador Program pursuant to which former NBA players speak to kids in the community about the dangers of drug use; (iii) the Dallas Mavericks facilitate a “Hoops for Health” program that places anti-drug messages in classroom materials and in a special section of the Dallas Morning News; and (iv) the Miami Heat will soon announce a partnership and various initiatives with the Miami Coalition for a Safe and Drug-Free Community, and will create public service announcements in support of this program.

NBA players, too, have contributed their efforts to the cause. Dikembe Mutombo, Vlade Divac, Peja Stojakovic, Nene, and Eduardo Najera have all appeared in media awareness campaigns and other events for Sports Against Drugs, a program co-sponsored by the NBA and the United Nations Office for Drug Control and Crime Prevention that educates young people about the dangers of drugs and the benefits of a healthy lifestyle through sports. NBA players, during each season and throughout the off-season, visit countless boys and girls clubs, recreation centers, schools, and hospitals to speak with children and promote the values of a drug-free lifestyle.

The NBA is committed to increasing our efforts in this area and targeting the use of steroids and performance-enhancing drugs. It is our intention, for example, to create a public service announcement directed at this issue that can be aired during NBA television programming. It is similarly our intention to incorporate anti-drug messaging within our Read to Achieve program -- the NBA's year-round

campaign to help young people develop an affinity for reading -- that reaches an estimated 50 million children a year, and within our Jr. NBA/Jr. WNBA Program – a nationwide support program for youth basketball leagues across the country – that reaches approximately 2 million kids and their parents on an annual basis. Finally, we also intend to utilize our website, NBA.com, which is uniquely visited by approximately half a million children each month, to distribute anti-drug messages.

The NBA is aware of this Committee's creation of the Zero Tolerance Committee, and understands that the current intention is for this Committee to convene in several meetings around the country during the course of this year. We would be pleased to participate on this Committee and to provide our input and ideas during these meetings.

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The NBA is fully committed to a strong and effective drug testing program for steroids and performance-enhancing substances. We made a good start in this area with the creation of our first steroids program in 1999, but intend to do better by making improvements in this program prior to the start of next season. We appreciate the attention that the Committee's efforts have brought to this important matter, and for the opportunity to testify here today. We will be pleased to answer any questions.